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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 **IN RE: INCRETIN-BASED**
16 **THERAPIES PRODUCTS**
17 **LIABILITY LITIGATION**

MDL NO. 2452

Case No. 13-MD-2452

**DEFENDANT WOLTERS KLUWER
UNITED STATES INC.'S MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

18 **THIS DOCUMENT RELATES**
19 **TO:**

Hon. Anthony J. Battaglia

20 Civil Action No.: 14-cv-00360-AJB-
21 MDD

Date: May 22, 2014

Time: 2:00 p.m.

Courtroom: 3B

22 *Danitta Rinder, Individually and as*
23 *Special Administrator for the Estate*
24 *of Gregg Rinder v. Merck Sharp &*
25 *Dohme Corp.; H.D. Smith Wholesale*
26 *Drug Co.; Smith Medical LLC;*
27 *Wolters Kluwer Health, Inc., and*
28 *Wolters Kluwer United States Inc.*

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant
Wolters Kluwer United States Inc. ("WKUS") hereby moves to dismiss Plaintiff's
First Amended Complaint. In support of its motion, and as set forth more fully in

1 its Memorandum filed contemporaneously herewith, WKUS states as follows:

2 1. Plaintiff, Danitta Rinder, filed a First Amended Complaint (“FAC”)
3
4 alleging her deceased spouse suffered pancreatic cancer as a result of an adverse
5 reaction to the prescription drug Januvia.

6 2. The FAC suggests that three groups of defendants are responsible for
7
8 Plaintiff’s injuries:

9 (a) Merck Sharp & Dohme Corporation (“Merck”), the
10 manufacturer of Januvia;

11 (b) H.D. Smith Wholesale Drug Company and Smith Medical
12 Partners (together “H.D. Smith”), distributors of prescription
13 drugs; and

14 (c) Wolters Kluwer Health, Inc. (“WKH”), a publisher of drug
15 information databases, including the generalized patient drug
16 education monograph information (“PEM”) identified by
17 Plaintiffs as the basis for their claims, and WKUS, a separate
entity from WKH that is not involved in publishing drug
information, let alone PEM information.

18 3. As set forth in its accompanying Memorandum, Plaintiff’s claims
19 against WKUS are misplaced because that entity is not involved in any way in
20 publishing information about Januvia or any other drug. Conclusory allegations
21 that WKUS was somehow involved in managing WKH in an unidentified way are
22 not enough (and there is no factual support for such allegations anyway) for the
23 Court to conclude that WKUS is a proper party.
24

25 4. WKUS, therefore, respectfully requests that the Court dismiss with
26
27 prejudice Plaintiffs’ claims against WKUS.
28

1 5. In addition, WKUS adopts the arguments of WKH as set forth in its
2 Memorandum in support of its Motion to Dismiss. Each of these arguments
3 provides additional independent bases for the Court to dismiss Plaintiffs' claims
4 against WKUS with prejudice.
5

6 WHEREFORE, for all of the foregoing reasons, and as set forth in detail in
7 its supporting Memorandum and the Memorandum of Defendant Wolters Kluwer
8 Health, Inc., Wolters Kluwer United States Inc. respectfully requests that this
9 Honorable Court dismiss with prejudice Plaintiffs' claims against it. Alternatively,
10 Defendant Wolters Kluwer United States Inc. respectfully requests that this Court
11 enter judgment in their favor and against Plaintiffs on Counts 25-27 of the FAC.
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16 Dated: March 19, 2014

Neal, Gerber & Eisenberg LLP

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18 By: /s/ Karl R. Barnickol

19 Karl R. Barnickol

20 Tonya G. Newman

21 Attorney for Defendant

22 Wolters Kluwer United States Inc.
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1 **CERTIFICATE OF SERVICE**

2 Karl R. Barnickol, an attorney, hereby certifies that he caused a copy of the
3
4 foregoing **Defendant Wolters Kluwer United States Inc.'s Motion to Dismiss** to
5 be served on:

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1 via electronic filing using the United States District for the Southern District of
2 California CM/ECF system which sent notification of such filing on the 19th day of
3
4 March, 2014.

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6
7 /s/ Karl R. Barnickol
8 Karl R. Barnickol
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